

### **REMARKS**

This Paper is submitted in response to the Office Action mailed on March 27, 2006, having a shortened statutory response period ending on June 27, 2006. This Paper is timely filed within the statutory response period. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-13 and 22-27 are pending in this application. Claims 14-21 have been cancelled.

Claims 1-7 and 11-13 were rejected under 35 U.S.C. § 103(a) for allegedly being obvious over U.S. Patent No. 6,371,975 to Cruise et al. (*Cruise*), in view of U.S. Patent No. 4,692,361 to Johnston et al. (*Johnston*). Claims 8, 13 and 22-26 were rejected under 35 U.S.C. § 103(a) for allegedly being obvious over *Cruise* in view of *Johnston* and in further view of U.S. Patent No. 4,910,147 to Bacehowski et al. (*Bacehowski*). Claims 9-10 and 27 were rejected under 35 U.S.C. § 103(a) as being obvious over *Cruise* in view of *Johnston* and in further view of U.S. Patent No. 4,936,458 to Bell et al. (*Bell*). Applicants respectfully disagree with and traverse these alleged rejections for the reasons set forth below.

*Cruise* does not disclose or suggest a flexible folded-film container with peripheral permanent seals, the container holding albumin as recited in the present claims. Rather, *Cruise* discloses a rigid syringe 60 filled with albumin solution. *Cruise*, col. 9 lines 5-15, col. 14 lines 1-25, Figures 1 and 7B. Albumin-containing syringe 60 is a component of a kit 14 that may be wrapped in a container 146. *Cruise*, col. 14 lines 1-25, Figure 7B. One of ordinary skill in the art would readily recognize that a rigid syringe is not a flexible, folded-film container. In particular, syringes typically entail a rigid syringe body, without seals and are made of either glass or extrusion molded polymeric material and are not a made of a folded film. Accordingly, *Cruise*'s albumin-containing rigid syringe 60 fails to disclose or suggest a flexible folded-film container as recited in the present claims.

The Office Action appears to contend that container 146 is to be considered a flexible bag that stores albumin. *See* Office Action dated March 27, 2006 at ¶ 3. It is an axiom of patent law that a reference as a whole must be considered for what it reasonably discloses. *In re Wright*, 6 USPQ2d 1959 (Fed. Cir. 1988). *Cruise* is clear that syringe 60 contains the albumin solution. Container 146 is a wrap around entire kit 14—which includes albumin syringe 60, second syringe 62, third syringe 104, tray 112, instructions 122, package 138, and package 140. *Cruise*,

col. 14 lines 1-25, Figures 1 and 7B. When *Cruise* is considered as a whole for what it reasonably discloses, it is clear that syringe 60—not container 146—contains the albumin solution.

Even assuming *arguendo* that container 146 is to be considered a bag for storing albumin (which it is not), container 146 would teach away from the claimed flexible, folded-film container having permanent seals about the periphery. *Cruise's* container 146 has a peel seal 148. Peel seal 148 teaches away from the container having permanent seals as recited in the present claims.

*Johnston* fails to fulfill the deficiencies of *Cruise* as *Johnston* and *Cruise* are not properly combinable. *Cruise* discloses a rigid syringe that contains an albumin solution. *Johnston*, on the other hand, discloses a flexible container. The skilled artisan would find no motivation to combine these references because such a combination would render the *Cruise* syringe unsuitable for its intended purpose. A syringe body requires rigidity for proper function. Syringe body rigidity is necessary for providing leak-free contact between the plunger and the syringe body. Syringe body rigidity is further necessary to provide appropriate friction between the plunger and the syringe body. This enables the syringe to perform its intended purpose—precision dosage of medical solutions to patients. As a combining *Johnston's* flexible folded-film container body with *Cruise's* rigid syringe would contradict the intended purpose of *Cruise*, *Johnston* and *Cruise* are not properly combinable.

*Bacehowski* also fails to fulfill the deficiencies of *Cruise* as *Bacehowski* is not properly combinable with *Cruise*. *Bacehowski* discloses a flexible container for containing cell culture media. *Bacehowski*, col. 2 lines 10-19. Combining *Bacehowski's* flexible container with *Cruise's* rigid syringe would be contrary to the intended purpose of *Cruise* for the reasons set forth above.

*Bell* teaches away from the film-folded container having permanent peripheral seals. *Bell* discloses a flexible bag made with peripheral peel seals and thereby teaches away from a container having permanent peripheral seals as recited in the present claims. *Bell*, col. 5 line 60 through col. 6 line 16, Figure 1. Teaching away is a *per se* demonstration of non-obviousness. *In re Dow Chemical Co.*, 837 F.2d 469 (Fed. Cir. 1988). Consequently, any combination with *Bell* is likewise *per se* non-obvious.

In summation, *Cruise* fails to disclose or suggest a flexible, film-folded container having permanent peripheral seals as recited in the present claims. *Johnston* and *Bacehowski* are not properly combinable with *Cruise* as such a combination would be contrary to the intended purpose of *Cruise*. Any combination with *Bell* is *per se* non-obvious as *Bell* teaches away from the present claims.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly request an early allowance of same.

Respectfully submitted,

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